

**Translation**

**PATENT COOPERATION TREATY**

**PCT**

**INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>Cas 2207PCT/GT2-</b>		<b>FOR FURTHER ACTION</b>	See Form PCT/IPEA/416
International application No. <b>PCT/EP2004/002749</b>	International filing date (day/month/year) <b>17.03.2004</b>	Priority date (day/month/year) <b>24.03.2003</b>	
International Patent Classification (IPC) or national classification and IPC			
Applicant <b>NESTEC SA</b>			

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																									
<p>4. This report contains indications relating to the following items:</p> <table> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>		<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
<input checked="" type="checkbox"/>	Box No. I	Basis of the report																							
<input type="checkbox"/>	Box No. II	Priority																							
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability																							
<input type="checkbox"/>	Box No. IV	Lack of unity of invention																							
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement																							
<input type="checkbox"/>	Box No. VI	Certain documents cited																							
<input type="checkbox"/>	Box No. VII	Certain defects in the international application																							
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application																							

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

**Best Available Copy**

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/002749

Box No. I

Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-15 \_\_\_\_\_ as originally filed/furnished
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the claims:
- nos. 1-29 \_\_\_\_\_ as originally filed/furnished
- nos.\* \_\_\_\_\_ as amended (together with any statement) under Article 19
- nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the drawings:
- sheets 1/7-7/7 \_\_\_\_\_ as originally filed/furnished
- sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/002749

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1.	Statement		
	Novelty (N)	Claims 2-19, 22-25, 27	YES
		Claims 1, 20, 21, 26, 28, 29	NO
	Inventive step (IS)	Claims 2-19, 22-25, 27	YES
		Claims 1, 20, 21, 26, 28, 29	NO
	Industrial applicability (IA)	Claims 1-29	YES
		Claims	NO
2.	Citations and explanations (Rule 70.7)		
1.	<p>The present report makes reference to the following documents, cited in the search report. The same numbering will be used hereinafter throughout the procedure:</p> <p>D1: US-A-5 473 972 (RIZZUTO LEANDRO P ET AL) 12 December 1995 (1995-12-12)</p> <p>D2: WO 01 24671 A (BIBOR S R L; PASQUATO STEFANO (IT)) 12 April 2001 (2001-04-12)</p> <p>D3: US-A-4 715 274 (PAOLETTI LUCIANO) 29 December 1987 (1987-12-29).</p>		
2.	<p>The present application fails to satisfy the requirements of PCT Article 6. The reasons are as follows:</p> <p>2.1 Claim 18 lacks clarity because it describes the sub-assembly for the intake by suction and for mixing. Said sub-assembly does not form part of the subject matter of claim 1, to which claim 18 refers back.</p> <p style="text-align: right;">/...</p>		

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
-----------	---

3. Furthermore, regardless of the aforementioned lack of clarity, the present application does not meet the requirements of PCT Article 33(1) since the subject matter of claims 1, 20, 21 and 26 fails to comply with PCT Article 33(2).

3.1 Document D1 describes (the references in parentheses are to said document):

- a disposable packaging (25, figure 1) for dispensing at least one preparation made from at least one siphonable liquid, said packaging comprising:
  - a sealed compartment containing the siphonable liquid;
  - means (35) for receiving a venturi sub-assembly for the intake by suction and for mixing (41, figure 6);
  - means for sealing the packaging (33);
  - a disposable packaging (25, figure 1) for dispensing at least one nutritive liquid, said packaging being formed of a lateral wall, a base, and a sealing element (33) that comprises a sealed cover and has a passage (31) to receive drawing-off means (45), a predetermined region of which cover can be unsealed to allow communication between the inside of the packaging (25) and the

/...

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

drawing-off means (45) without said  
means entering the packaging.

The subject matter of claims 1 and 20  
therefore lacks novelty (PCT Article 33(2)).

3.2 Document D1 further describes:

- a production and distribution method  
comprising the following steps:
  - opening the packaging (25);
  - using a compressed fluid (steam) to  
draw liquid out of the compartment, by  
means of a vacuum effect, in order to  
introduce it into the venturi means  
(column 2, lines 27-34);
  - mixing liquid with the compressed fluid  
(column 2, lines 34-36);
  - dispensing the preparation thus  
obtained (column 2, lines 41-42).

The subject matter of claims 21 and 26  
therefore lacks novelty (PCT Article 33(2)).

4. The present application fails to satisfy the  
requirements of PCT Article 33(1) since, contrary  
to the requirement of PCT Article 33(3), the  
subject matter of claim 1 does not involve an  
inventive step.

/...

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

4.1 Document D2, considered to be the closest prior art, describes (see figure 1) a packaging, from which the subject matter of claim 1 differs by virtue of the means for receiving a venturi sub-assembly for the intake by suction and for mixing. Document D2 describes a disposable sealed packaging (1) with means (hole 2) for receiving a sub-assembly for the intake by suction and for mixing (31, 142) but the sub-assembly according to said document is not described as a venturi sub-assembly.

However, document D2 makes reference to document D3 (page 6, line 25), which describes a venturi sub-assembly for the intake by suction and for mixing (see figure 7).

Document D2 further describes a method comprising the steps defined in claim 21.

The subject matter of claims 1 and 21 does not involve an inventive step as defined in PCT Article 33(3).